

REMARKS

This paper is intended to be a complete response to the above-identified Office Action. It is believed no fee is due. If fees are required, however, the Commissioner is authorized to deduct the necessary charges from Deposit Account 501922/149-0166US.

Claims 1, 2, 7, 8, 10, 13, 14, 20, 24-26, 31, 32, 34-36, 38, 40, 41, 44 and 45 have been amended. Claims 5, 6, 18, 19, 29, 30, 42, 43, 46, 47 and 49-51 have been cancelled without prejudice to their continued prosecution in a Continuation Application. Accordingly, 38 claims (1-4, 7-17, 20-28, 31-41, 44, 45 and 48) are currently pending in the instant patent application.

Section 112 Formalities

The Examiner has rejected claims 1-12, 25-44 and 49-51 under 35 U.S.C. 112 as allegedly failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Specifically, the Examiner asserts that "it is not clear what is considered "substantially" at [sic] the claims 1, 25, 41, 49." Office Action at page 2, ¶ 1.

Assignee disagrees that the term "substantially" is indefinite as used in the claims. As noted in the specification, one aspect of the claimed invention is to create "a point-in-time consistent copy of one or more designated database objects without impacting the designated objects' availability to other users." Specification at 0020. Further, the Federal Circuit has defined "substantially" as a term of degree that should not be interpreted as having a strict numerical limitation, implying "approximate" rather than "perfect." *Playtex Prods., Inc. v. Procter & Gamble Co.*, 400 F.3d 901, 907-908 (Fed. Cir. 2005). This characterization comports with the Assignee's written description and use of this term in claims 1, 25, 41 and 49. Given the context of the claimed subject matter (user access to database objects), Assignee believes that one of ordinary skill in the art would clearly understand the meaning of the term "substantially."

The Examiner has also rejected claim 35 for lacking antecedent basis for the phrase "the act of removing." Office Action at page 2, ¶ 1. Claim 35 has been amended to depend from claim 34 – thereby providing antecedent basis for the offending phrase. This amendment was made to correct an obvious typographical error (as noted by the Examiner) and not for any reason related to the patentability of the recited subject matter.

In light of these remarks and amendment to claim 35, it is believed that the Examiner's rejections under 35 U.S.C. 112 have been overcome. Accordingly, Assignee respectfully request these rejections be withdrawn and the claimed subject matter allowed to pass to issue.

Allowable Subject Matter

The Examiner has objected to claims 6-12, 19-22, 30-38, 43, 44 and 47 as "being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and to overcome the rejection under 35 U.S.C. 112, second paragraph." Office Action at page 7, ¶ 5.

Assignee has:

- Rewritten independent claim 1 to incorporate the subject matter of objected-to dependent claim 6;
- Rewritten independent claim 13 to incorporate the subject matter of objected-to dependent claim 19;
- Rewritten independent claim 25 to incorporate the subject matter of objected-to dependent claim 30;
- Rewritten independent claim 41 to incorporate the subject matter of objected-to dependent claim 43; and
- Rewritten independent claim 45 to incorporate the subject matter of objected-to dependent claim 47.

In addition:

- o Dependent claims 2, 7, 8 and 10 have been amended to comport with amended independent claim 1 and for no other reason;
- o Dependent claims 14, 20 and 24 have been amended to comport with amended independent claim 13 and for no other reason;
- o Dependent claims 26, 31, 32, 34-36, 38 and 40 have been amended to comport with amended independent claim 25 and for no other reason; and
- o Dependent claim 44 has been amended to comport with amended independent claim 41 and for no other reason.

Assignee believes these amendments conform pending claims 1-4, 7-17, 20-28, 31-41, 44, 45 and 48 to an allowable form as indicated by the Examiner.

CONCLUSIONS

Reconsideration of pending claims 1-4, 7-17, 20-28, 31-41, 44, 45 and 48 in light of the above remarks and amendments is respectfully requested. If, after considering this reply, the Examiner believes that a telephone conference would be beneficial towards advancing this case to allowance, the Examiner is strongly encouraged to contact the undersigned attorney at the number listed.

/Coe F. Miles, Ph.D., J.D./
Reg. No. 38,559

Date: June 8, 2006

Wong, Cabello, Lutsch, Rutherford & Bruculeri, L.L.P.

Customer No. 29855
20333 SH 249, Suite 600
Houston, Texas 77070

Voice: 832-446-2418
Facsimile: 832-446-2458
Email: cmiles@counselIP.com